



# California Fair Political Practices Commission

November 20, 1989

Judy Vonada  
City Clerk  
City of Hayward  
22300 Foothill Boulevard  
Hayward, CA 94541

Re: Your Request for Advice  
Our File No. A-89-605

Dear Ms. Vonada:

You have requested advice on behalf of Hayward Mayor Alex Giuliani regarding his obligations under the Political Reform Act (the "Act").<sup>1</sup>

## QUESTION

Mayor Giuliani has established a committee to run for the Assembly in 1990. May the committee solicit funds to pay for legal fees in connection with proceedings to correct an error which the Mayor made in changing his party affiliation in order to run for the Assembly?<sup>2</sup>

---

<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> You also asked two other questions. The first involved the obligations of Mr. Giuliani's opponent. As I indicated in our telephone conversation, the Commission does not provide advice regarding past conduct, nor regarding the duties of persons whom the requestor does not represent.

Second, you asked whether Mayor Giuliani's Assembly 1990 committee can use funds raised by the committee to pay legal fees in connection with the litigation. This question falls under provisions of the Elections Code which are not presently under the jurisdiction of the Commission. Your question should be addressed to the Attorney General's Office.

### CONCLUSION

Funds raised to pay the legal fees are contributions which may be solicited by Mayor Giuliani's Assembly 1990 committee. Such funds are subject to the contribution limits of Proposition 73.

### FACTS

Recently, Hayward Mayor Alex Giuliani decided to run for the Assembly in 1990 as an independent. As a result of this decision, the Mayor changed his party affiliation to what he thought was an "independent" however, by error he checked "American Independent". The mistake on the Mayor's voter registration card was brought to the attention of approximately 62,000 voters by the current Assemblyman. The Mayor is currently involved in legal proceedings to correct the error and change his voter registration to designate him as an "independent" rather than an "American Independent." The action would enable him to run for Assembly as an independent.

### ANALYSIS

The Act, as amended by Propositions 73, requires that prior to soliciting or receiving contributions, an individual who intends to be a candidate for an elective office must file with the Commission a statement of intention to be a candidate for that office (Form 501), and must establish one campaign contribution account for that office. (Sections 85200 and 85201.) All contributions for that office must be deposited in the account for that office. (Section 85201.) Proposition 73 also imposes limits on the amount of contributions which a candidate may accept from a particular source in a single fiscal year. (Sections 85301, 85303 and 85305.)

Section 82015 provides that the term "contribution" includes a payment for which full and adequate consideration is not received, unless it is clear from the surrounding circumstances that the payment is not made for political purposes. Commission regulations further define a contribution as a payment received by or made at the behest of:

A candidate, unless it is clear from surrounding circumstances that the payment was received or made at his behest for personal purposes unrelated to his candidacy or status as an officeholder....

Regulation 18215(b)(1).

In the present situation, the litigation to which you are referring is directly related to Mayor Giuliani's candidacy for the Assembly. The funds received for that purpose constitute contributions. (In re Johnson (1989) 11 FPPC Ops. 1, In re Buchanan (1979) 5 FPPC Ops. 14, copies enclosed.) Accordingly,

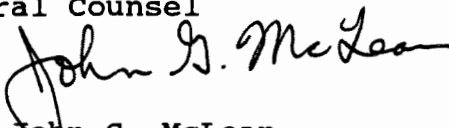
Our File No. A-89-605  
Page 3

they must be raised within the contribution limits of Proposition 73, and must be deposited in the account for Mayor Giuliani's race for the Assembly in 1990.

If you have any further questions, please contact me at (916) 322-5901.

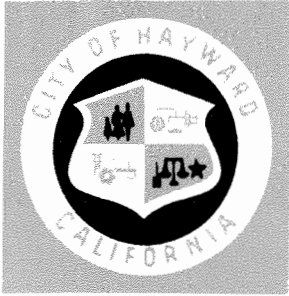
Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: John G. McLean  
Counsel, Legal Division

KED:JGM:aa

Enclosures



**CITY OF HAYWARD . OFFICE OF THE CITY CLERK**

October 17, 1989

Technical Assistance and Analysis Division  
California Fair Political Practices Commission  
428 I Street, Suite 800  
Box 807  
Sacramento, CA. 95804-0807

OCT 17 1989

I would appreciate your assistance in answering several questions. However, before I proceed with the questions, I think it is important to give you the background.

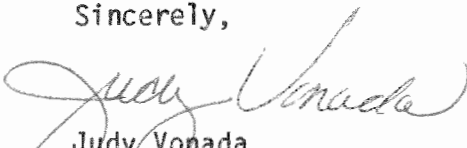
Recently our Mayor Alex Giuliani decided to run for Assemblyman as an independent in 1990. As a result of this decision the Mayor changed his party affiliation to what he thought was an "independent" however, by error he checked "American Independent". The mistake on the Mayor's voter registration card was brought to the attention of approximately 62,000 registered voters by the current Assemblyman. The Mayor is currently involved in legal proceedings to correct the error and change his voter registration to designate him as an "independent" not "American Independent". The action would enable him to run for Assembly as an independent.

I would appreciate your assistance with the following questions:

1. Is there any regulation that covers the amount of funds the current Assemblyman used to mail out the information regarding the voter registration of his opponent, Alex Giuliani? (A copy of the material mailed is attached)
2. A committee to support Alex Giuliani's candidacy for Assemblyman has already been established. Can the funds from this committee be used to pay for the fees in connection with the proceedings to change his voter designation?
3. If these funds can be used to pay the legal fees, can the committee continue to solicit funds to pay for the legal fees?

I would appreciate a response as soon as possible. Thank you for your help.

Sincerely,

  
Judy Vonada  
City Clerk